IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINRY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 1004 OF 2005

Anuradha Arun Chindarkar …Petitioner

Versus

The State of Maharashtra & Ors. …Respondents

Mr. S.M. Railkar for the Petitioner

Mr. M.D. Naik, Assistant Government Pleader, for the State.

CORAM: DALVEER BHANDARI, C.J., &
S. J. VAZIFDAR, J.
DATE : JULY 18, 2005.

P.C.

1. The petitioner is aggrieved by the order by which she was dispossessed from the suit premises on 7th April, 2005,

and later on, the possession was restored on 13th April, 2005.

2. Pursuant to the show-cause notice, a reply-affidavit has been filed by the Deputy Chief Officer (RT), Mumbai Building Repairs and Reconstruction Board (for short, 'MBRRB'), a regional Unit of MHADA. It is mentioned that there were two buildings, known as "Jaya Bhavan" and "Ram Bhavan", situate at F.P.No. 24, TPS III, Mahim Division, 63A and 63B, J.K. Sawant Marg, Woollen Mill Lane, Dadar (West), Mumbai. A Scheme for re-development of the said buildings under Regulation 33(7) of the Development Control Regulations, 1991, was submitted by one Mr. Nilesh Ketkar, one of the partners of M/s. Parth Developers. It is also incorporated that the owners / developers are obliged to hand over the surplus area as would be calculated on the application of Appendix IV to the said Regulation 33(7).

It is mentioned that regarding Flat No. 14 'A', which was one of the flats handed over as surplus area under the said Re-Development Scheme under Regulation 33(7), the petitioner is claiming through respondent No. 3, Mehechand Khemchand Shah. It is mentioned that respondent No. 3 was allotted the above flat purportedly on the ground that he was on the Master List as a tenant of an old dilapidated building, which was given a vacation notice. The allotment was made some time on 17th January, 2003. A complaint was received by respondent No. 4. According to the complaint, the said flat has been fraudulently allotted to respondent No. 3, Mehechand Khemchand Shah. An inquiry was directed on that complaint. Respondent No. 3 was occupying a non-residential tenement in the old building situate at 28, First Bhoiwada Lane, Mumbai. The said building was never acquired by the MBRRB for the purposes of re-construction or re-development. Therefore, respondent

No. 3 was never granted any transit accommodation as per the policy of respondent No. 2. Respondent No. 3's case for allotment of permanent alternate accommodation has never been certified by the Master List Committee. According to respondent No. 7, respondent No. 3 could never have been entitled to a residential tenement in lieu of the commercial tenement, as only the holders of residential tenements are granted transit camp accommodation, whereas the holders of commercial tenements are accommodated in the re-developed building on the same site by allotment of a commercial tenement. It is mentioned that with a *bona fide* view to protect the property of respondent No. 2, respondent No. 4 issued written orders for taking possession of the said property.

3. It may be pertinent to mention that according to the petitioner, she purchased the said property some time in

April, 2004. It is mentioned that as a prudent purchaser, the petitioner ought to have brought the purchase of the flat to the notice of respondent No. 2 or the MBRRB. Respondent No. 6 or 7 was not aware of the fact that the said flat is in occupation of the petitioner. In these circumstances, the action taken of evicting the petitioner was for the *bona fide* reason of protecting the property of respondent No.2-Authority. It is also incorporated that respondent No. 2 did not mean to cause any harm, loss or inconvenience to the petitioner. Respondent Nos. 6 and 7 reiterated that they were not aware of the possession of the petitioner of the said premises.

4. It is also mentioned that this petition had come up for admission on 13th April, 2005 when the keys of the said flat were handed back to the petitioner, and a letter of regret dated 28th April, 2005 was also issued to the petitioner, in which it is recorded that action, if any, in

respect of the said flat would be taken in accordance with law.

5. The learned Assistant Government Pleader appearing for the respondents submits that henceforth, all proceedings shall be taken in accordance with law and in case the proceedings ultimately are decided against the petitioner, the order shall not be implemented for a period of eight weeks from the date of the issuance of the order.

6. The learned counsel for the petitioner states that during the interrugnum period, no third party rights would be created by the petitioner.

7. No further directions are necessary. This petition is accordingly disposed of.

CHIEF JUSTICE

S.J. VAZIFDAR, J.